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AUTHORITY: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a-276a-7; 76 Stat. 357-359, 40 U.S.C. 327-332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

SOURCE: 49 FR 10627, Mar. 21, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 6 appear at 61 FR 19984, May 3, 1996.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) *Associate Solicitor* means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(c) *Chief Administrative Law Judge* means the Chief Administrative Law

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Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington DC 20001-8002.

(d) *Respondent* means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest, if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

[49 FR 10627, Mar. 21, 1984, as amended at 56 FR 54708, Oct. 22, 1991]

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing. However, documents are not deemed filed until received by the Chief Clerk at the Office of Administrative Law Judges and where documents are filed by mail 5 days shall be added to the prescribed period.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Subpoenas (Service Contract Act).

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify

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as exactly as possible the documents to be produced.

§ 6.5 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing or deposition, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

§ 6.6 Administrative Law Judge.

(a) *Equal Access to Justice Act.* Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act (Pub. L. 96-481). In any hearing conducted pursuant to the provisions of this part 6, Administrative Law Judges shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(b) *Contumacious conduct: failure or refusal of a witness to appear or answer.* Contumacious conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing. In cases arising under the Service Contract Act, the failure or refusal of a witness to appear at any hearing or at a deposition when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41

U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 6.7 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the presiding Administrative Law Judge is authorized, if such party fails to show good cause for such failure to appear, to dismiss the case or to find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate. Only where a petition for review of such default judgment cites alleged procedural irregularities in the proceeding below and not the merits of the case shall a non-appearing party be permitted to file such a petition for review. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

§ 6.8 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Administrative Review Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding.

If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.15 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Associate Solicitor for